

FILED

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS 2013 DEC -4 PM 12: 28

SAN ANTONIO DIVISION

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

**DANIEL THOMASON SMITH (1),
KATHLEEN MARINA KELLY-TUORILA (2),
and
ROBIN RENEE HAIGLER (3),**

Defendants.

) CRIMINAL NO.

SA 13 CR 09780 G

) [Vio.: 18 U.S.C. § 1349, Conspiracy to
) Commit Health Care Fraud; 18 U.S.C. §§
) 1347 & 2, Aiding & Abetting Health Care
) Fraud; 18 U.S.C. §§1028A(a)(1) & 2,
) Aiding and Abetting Aggravated Identity
) Theft; 18 U.S.C. §§ 1035 & 2,
) Aiding and Abetting False Statements
) Related to a Health Care Matter]

INTRODUCTION

At all times material to this indictment:

1. **DANIEL THOMASON SMITH** was the owner and operator of DTS Medical Supply Company, a durable medical equipment provider, with its business office located in Devine, Texas.
2. **KATHLEEN MARINA KELLY-TUORILA** was employed by **DANIEL THOMASON SMITH** as office manager for DTS Medical Supply Company. It was her primary duty to process Medicare and Medicaid reimbursement claims for products sold by the company.
3. **ROBIN RENEE HAIGLER** worked on a commission for DTS Medical Supply Company and would receive a payment for every customer that she brought in that would purchase medical equipment from the company.
4. The Medicare Program (Medicare) was a federal health care program providing benefits to persons who were over the age of sixty-five (65) or disabled. Medicare was administered

by Trailblazer Health Enterprises, LLC, as the Medicare Administrator Contractor for Medicare in Texas. Individuals who received benefits under Medicare were referred to as Medicare beneficiaries.

5. The Texas Medicaid Program (Medicaid) was a cooperative federal-state health care program providing benefits to certain low-income individuals and families in the State of Texas. Texas Medicaid was administered by the Texas Medicaid and Healthcare Partnership. Individuals who received benefits under Medicaid were referred to as Medicaid beneficiaries.
6. Medicare and Medicaid were each a “health care benefit program” as defined by Title 18, United States Code, Section 24(b), and a “Federal health care program” as defined by Title 42, United States Code, Section 1320a-7b(f). As such, both entities affected interstate commerce.
7. Both Medicare and Medicaid provided qualified beneficiaries with financial remuneration for the purchase of prescribed and necessary medical equipment. Such medical equipment would include powered wheelchairs, powered scooters and accessories related to those two devices. Medicare and Medicaid set a rate of compensation for each of these devices and the rate of compensation differed between devices and was to be based on the type of device that was prescribed for the beneficiary and delivered to the beneficiary.
8. As a provider of durable medical equipment, DTS Medical Supply Company was authorized to prepare and submit claims to Medicare and Medicaid for beneficiaries in the course of filling validly issued prescriptions for those beneficiaries.
9. Once DTS submitted a claim to Medicare or Medicaid, Medicare and/or Medicaid would pay DTS the prescribed benefit through electronic wire transfer to an account belonging to DTS Medical Supply Company at the Falcon International Bank.

THE SCHEME TO DEFRAUD

10. Beginning on or about May 1, 2006, and continuing until on or about January 1, 2010, **KATHLEEN MARINA KELLY-TUORILA**, at the direction of **DANIEL THOMASON SMITH**, submitted false and fraudulent benefit claims to Medicaid and Medicare.
11. **ROBIN RENEE HAIGLER** would routinely collect information and generate documents requesting compensation for Medicare and Medicaid beneficiaries for the purchase of powered wheelchairs. These documents would contain prescriptions purportedly prescribing the necessity of a powered wheelchair for the beneficiary when, in fact, the physician indicated on the prescription had not prescribed a powered wheelchair for the beneficiary and, in many cases, had never met or had any relationship with the beneficiary. **ROBIN RENEE HAIGLER** often generated these fraudulent prescriptions in the course of preparing the documents requesting compensation. She would then forward them to **KATHLEEN MARINA KELLY-TUORILA** knowing that **KATHLEEN MARINA KELLY-TUORILA** would then submit the fraudulent claims for payment by Medicare and Medicaid.
12. After submitting the fraudulent documents to **KATHLEEN MARINA KELLY-TUORILA**, **ROBIN RENEE HAIGLER** would often arrange to deliver a powered scooter to the beneficiary despite the fact that Medicare and Medicaid was being billed for a power wheelchair. This resulted in a larger payment from Medicare and/or Medicaid and a larger percentage of profit for DTS Medical Supply Company and **DANIEL THOMASON SMITH**.

COUNT ONE
[18 U.S.C. § 1349]

Paragraphs 1 through 12 set out above are re-alleged and incorporated by reference as though fully set out herein.

From on or about May 1, 2006, and continuing until on or about January 1, 2010, in the Western District of Texas and elsewhere and within the jurisdiction of the Court, the defendants

**DANIEL THOMASON SMITH (1),
KATHLEEN MARINA KELLY-TUORILA (2), and
ROBIN RENEE HAIGLER (3),**

did knowingly and willfully combine, conspire, confederate and agree together and with others, known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program affecting interstate and foreign commerce, as defined in Title 18, United States Code, Section 24(b), that is Medicare and Medicaid, and to obtain by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by and under the control of said health care benefit programs, in connection with the delivery of and payment for health care benefits, items and services.

PURPOSE OF THE CONSPIRACY

It was the purpose and object of the conspiracy for the defendants and their coconspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare and Medicaid for medical equipment that was not lawfully prescribed; (b) submitting claims and receiving compensation for powered wheelchairs and accessories while actually providing powered scooters to the Medicare and Medicaid beneficiaries; (c) concealing the submission of false and fraudulent claims to Medicare and Medicaid and the receipt and transfer of the proceeds from the fraud; and (d) diverting the

proceeds of the fraud for the personal use and benefit of the defendants and their coconspirators in the form of compensation and other remuneration.

MANNER AND MEANS

The defendants sought to accomplish the object and purpose of their conspiracy by committing acts as specified in paragraph 10 through 12 above.

OVERT ACTS

In furtherance of the conspiracy, the defendants committed those acts specified and set out in Counts Three through Twenty-One below.

All in violation of Title 18, United States Code, Section 1349.

COUNT TWO [18 U.S.C. §§ 1347 & 2]

Paragraphs 1 through 12 set out above are re-alleged and incorporated by reference as though fully set out herein.

From on or about May 1, 2006, and continuing until on or about January 1, 2010, in the Western District of Texas and elsewhere and within the jurisdiction of the Court, defendants

**DANIEL THOMASON SMITH (1),
KATHLEEN MARINA KELLY-TUORILA (2), and
ROBIN RENEE HAIGLER (3),**

aided and abetted by each other knowingly and willfully executed and attempted to execute the above described scheme and artifice to obtain by means of materially false and fraudulent pretenses, representations and promises, \$3,500,000.00, money and property owned by and under the custody and control of Medicare and Medicaid, health care benefit programs as defined in Title 18, United States Code, Section 24(b), in connection with the payment for health care benefits, items and services, all in violation of Title 18, United States Code, Sections 1347 and 2.

COUNTS THREE THROUGH THIRTEEN

[18 U.S.C. §§ 1028A(a)(1) & 2]

Paragraphs 1 through 12 set out above are re-alleged and incorporated by reference as though fully set out herein.

On or about the dates set out in the chart below relative to each count, in the Western District of Texas and elsewhere and within the jurisdiction of the Court, defendants

**DANIEL THOMASON SMITH (1),
KATHLEEN MARINA KELLY-TUORILA (2), and
ROBIN RENEE HAIGLER (3),**

aided and abetted by each other did knowingly use, without lawful authority, a means of identification of another person, to wit, the name and signature of the physician whose initials are set out in the chart below relative to each count, during and in relation to the crime of Conspiracy to commit and the commission of Health Care Fraud as outlined in Counts One and Two of this indictment, felonies enumerated in Title 18, United States Code, Section 1028A(c), to wit, Title 18, United States Code, Sections 1349 and 1347 both parts of Title 18, United States Code, Chapter 63, all in violation of Title 18, United States Code, Sections 1028A(a)(1) and 2.

<u>Count No.</u>	<u>Date</u>	<u>Physician</u>
THREE	01/08/2009	W.C.
FOUR	03/11/2009	S.M.
FIVE	03/18/2009	J.A.
SIX	03/23/2009	R.W.
SEVEN	04/02/2009	S.H.
EIGHT	04/23/2009	G.B.
NINE	06/01/2009	S.Q.
TEN	07/13/2009	R.W.

ELEVEN 07/13/2009 J.U.

TWELVE 07/20/2009 R.G.

THIRTEEN 09/10/2009 M.P.

COUNTS FOURTEEN THROUGH TWENTY-ONE

[18 U.S.C. §§ 1035 & 2]

Paragraphs 1 through 12 set out above are re-alleged and incorporated by reference as though fully set out herein.

On or about the dates set out in the chart below relative to each count, in the Western District of Texas and elsewhere and within the jurisdiction of the Court, defendants

**DANIEL THOMASON SMITH (1),
KATHLEEN MARINA KELLY-TUORILA (2), and
ROBIN RENEE HAIGLER (3),**

aided and abetted by each other did, in a matter involving a health care benefit program, knowingly and willfully falsify, conceal, and cover up by trick, scheme, and device, material facts, and make materially false documents knowing the same to contain materially false statements and entries, to wit, that powered wheelchairs were being provided to the beneficiaries whose initials are set out in the chart below relative to each count, when, in fact, powered scooters or nothing at all were being provided to the beneficiaries, all in connection with the delivery of and payment for health care benefits, items and services all in violation of Title 18, United States Code, Sections 1035 and 2.

<u>Count No.</u>	<u>Date</u>	<u>Health Care Program</u>	<u>Beneficiary</u>
FOURTEEN	03/11/2009	Medicare	C.T.
FIFTEEN	03/18/2009	Medicare	J.C.
SIXTEEN	03/23/2009	Medicare	K.W.
SEVENTEEN	04/02/2009	Medicare	M.W.

EIGHTEEN	04/23/2009	Medicaid	H.P.
NINETEEN	06/01/2009	Medicare	J.W.
TWENTY	07/13/2009	Medicare	R.W.
TWENTY-ONE	07/20/2009	Medicare	E.W.

A TRUE BILL


Foreperson

ROBERT PITMAN
UNITED STATES ATTORNEY

By:



GREGORY J. SUROVIC
Assistant United States Attorney